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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1991

THE CITY OF CHICAGO, et al.,

Petitioners,

v.

ENVIRONMENTAL DEFENSE FUND, et al.,

Respondents.

Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

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BRIEF OF THE CITY OF SPOKANE, WASHINGTON; SPOKANE COUNTY, WASHINGTON; SKAGIT COUNTY, WASHINGTON; CITY OF TACOMA, WASHINGTON; MARION COUNTY, OREGON; RECOMP OF WASHINGTON; AND REGIONAL DISPOSAL COMPANY AS AMICI CURIAE IN SUPPORT OF PETITIONERS

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The City and County of Spokane, Washington; the City of Tacoma, Washington; Skagit County, Washington; Marion County, Oregon; Regional Disposal Company; and Recomp of Washington respectfully submit this brief as amici curiae in support of the petition of the City of Chicago and Mayor Richard M. Daley for a writ of certiorari to the United States Court of Appeals for the Seventh Circuit.[1]

INTERESTS OF AMICI

The United States faces a waste disposal crisis. In contrast to landfills, space for which is fast disappearing, incineration recovers energy from and reduces the volume of municipal trash. These benefits, among others, make resource recovery a key weapon in the war on waste. The decision of the Court of Appeals, however, threatens to foreclose resource recovery and to punish every private and public entity that accepted Congress's invitation to exploit its benefits.

For the City and County of Spokane, Washington, resource recovery was a response not only to a waste disposal crisis, but also to a drinking water crisis. The citizens of the City of Spokane and Spokane County (collectively "Spokane") are blessed with a priceless resource: the Spokane Valley-Rathdrum Prairie Aquifer. The aquifer is the federally designated sole source of drinking water for over 500,000 people. 43 Fed. Reg. 5566 (Feb. 9, 1978). Yet it is also a fragile resource, subject to pollution by landfills. Landfills above the aquifer have been a concern for many years.

Contamination of the aquifer from solid waste landfills was first noted in 1979 when the Spokane County Engineer's office issued its Water Quality Management Plan to Preserve the Quality of the Spokane-Rathdrum Aquifer under Section 208 of the Federal Water Pollution Control Act, 33 U.S.C.A. § 1288 (West Supp. 1991). The Water Quality Management Plan

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[1] The parties' letters of consent, pursuant to Rule 36 of the Rules of this Court, have been filed with the Clerk.

recommended that resource recovery, recycling, and innovative disposal methods be considered as alternatives to landfills. In 1984 Spokane's Northside Landfill was placed on the National Priorities List (NPL) of waste cleanup sites, commonly referred to as "Superfund sites." 49 Fed. Reg. 40,320 (October 15, 1984). Spokane's landfills at Mica, Greenacres and Colbert were also added to the NPL. 51 Fed. Reg. 21,054 (June 10, 1986).[2] The Mica, Greenacres and Colbert landfills are now closed, and all but a few acres of the Northside Landfill are closed as well.

In response to this crisis involving both its drinking water supply and its waste disposal capacity, Spokane began a regional public planning process. Spokane's goal was to consider local needs and policies and develop a balanced waste management program in accordance with the Washington Solid Waste Management Act ("SWMA"), Wash. Rev. Code ch. 70.95 (1989).

The first step in the planning process was to consider alternatives to solid wastes landfills. In 1981 Spokane began analyzing resource recovery and recycling. Three years later it adopted the 1984 Spokane County Comprehensive Solid Waste Management Plan Update ("1984 Plan"). The 1984 Plan includes specific elements for recycling, waste reduction and resource recovery; garbage landfills are only a last resort for Spokane. The Washington Department of Ecology ("Ecology") approved the 1984 Plan, and the Washington Supreme Court held it was consistent with the SWMA. Citizens for Clean Air v. City of Spokane, 114 Wn.2d 20, 785 P.2d 447 (1990).

To mitigate the effects of existing landfills as rapidly as possible, Spokane aggressively implemented the recycling and resource recovery elements of the 1984 Plan. Recycling programs increased the recycling rate in

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[2] Sites are added to the NPL only if the Environmental Protection Agency finds that they present a significant risk to public health or the environment compared to other sites in the nation. 40 CFR § 300.66 (1991).

Spokane County from 5% in 1984 to 31% in 1991.[3] To manage the rest of the waste stream, Spokane issued an environmental impact statement and selected a site for a "waste-to-energy facility" ("WTE") in 1986. In 1987 Spokane signed a vendor contract to build and operate the WTE, a power sales contract for the electricity that the WTE generates, and a lease for the WTE site. In 1989 Spokane issued $103 million in bonds and accepted a $60 million grant from Ecology to design and build the WTE and recycling programs. In 1990 Spokane signed a long-term contract for ash disposal away from Spokane's aquifer at amicus Regional Disposal Company's new state-of-the-art landfill in Klickitat County, Washington.

Amici Skagit County, Marion County and Tacoma all faced solid waste disposal challenges similar to Spokane's. They planned long-term, integrated strategies and opted for resource recovery as cost-effective and in the best interests of their local communities. Whatcom County, Washington, under the planning requirements of SWMA, elected to use private incineration and ash landfill facilities located in Whatcom County but owned and operated by amicus Recomp of Washington ("Recomp"). Amicus Regional Disposal owns and operates an ash landfill in Klickitat County, Washington, that serves Spokane and could become an ash disposal facility for any new or existing resource recovery facilities in the Pacific Northwest.

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[3] Spokane's long-range goal is to recycle 50% by 1995, in accordance with the goal set by the Washington Legislature. Wash. Rev. Code § 70.95.010(9) (1989). See also Spokane County Comprehensive Solid Waste Management Plan Update, pp. 75 and 100 - 101 (March 1991).

SUMMARY OF ARGUMENT[4]

Congress provided a comprehensive national framework for waste management in the Resource Conservation Recovery Act, 42 U.S.C. §§ 6901 - 6992k ("RCRA"). RCRA establishes minimum federal requirements that are implemented at the state and local level. State and local government may supplement RCRA's minimum requirements with more stringent standards.

At the heart of RCRA is a distinction between wastes that are "hazardous" and wastes that are not. See 42 U.S.C.A. § 6921 (West Supp. 1991). "Hazardous" wastes are a small, distinct subset of "solid" wastes. Hazardous wastes are subject to very stringent minimum standards under Subtitle C of RCRA. See 42 U.S.C.A. §§ 6921 - 6939b (West Supp. 1991). Subtitle C standards detail all phases of hazardous waste management, from the type-size on 55-gallon drum labels to the design standards for large regional landfills. Solid wastes are subject to an equally comprehensive but less stringent set of minimum standards under Subtitle D of RCRA. See 42 U.S.C.A. §§ 6941 - 6949a (West Supp. 1991).

Congress's decision to regulate hazardous and solid wastes separately rests on the sound principle that hazardous wastes pose the greatest risk to public health and should be regulated more stringently than other wastes. Congress also recognized, however, that applying Subtitle C standards broadly could discourage beneficial activities. Furthermore, effective implementation of Subtitle C requires that regulations be focused on the relatively small number of industries that generate the largest amounts of hazardous waste. Thus, Congress

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[4] Amici curiae agree with petitioners' arguments that the Court should grant review because the Second and Seventh Circuits have issued conflicting rulings, because the Seventh Circuit's decision contravenes RCRA's language and Congress's intent, and because the question presented calls for judicial resolution. The thrust of this brief is different: It calls attention to the uncertainty created in the Pacific Northwest by the Seventh Circuit's decision and shows how that decision undercuts fundamental statutory policies in RCRA.

authorized exclusions to its definition of hazardous waste and entrusted the states with the primary responsibility for regulating the remaining waste stream.

The Court of Appeals' decision in this case ignores these key policy considerations. The Seventh Circuit's interpretation of RCRA would subject local solid waste management to stringent Subtitle C standards. If adopted in the Ninth Circuit, the court's interpretation would require Pacific Northwest cities and counties implementing resource recovery and recycling programs to amend existing waste management plans and to even consider abandoning existing public and private waste management facilities. Cities and counties would be required in the 1990s to start yet another decade-long effort to address the solid waste crisis, but with less time and even fewer options than were available in the 1980s.

The Court of Appeals' decision also threatens to disrupt existing contractual arrangements between the public and private sectors. Long-term contracts have been signed based on predictable, long-term operating costs. Hundreds of millions of dollars worth of municipal bonds have been issued and repayment terms negotiated based upon predictable, long-term ash disposal fees. An immediate and unexpected 300% increase in landfill costs could jeopardize the ability of government to repay these bonds. This in turn could ruin municipal bond ratings and jeopardize financing for roads, buildings, bridges, sewers, waste water treatment plants, landfill closures and public transit.

Such costs might be tolerable if they made possible some significant public benefit. Imposing Subtitle C standards on ash, however, will not provide any additional protection for the public. In Oregon and Washington, ash and other processed solid wastes are managed under specifically tailored standards that are at least as stringent as EPA's newest Subtitle D standards.[5] In a landfill environment, ash is less troublesome than unprocessed

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[5] In October 1991 EPA substantially upgraded its Solid Waste Disposal Facility Criteria. 56 Fed. Reg. 50978 (October 9, 1991) (to be codified at 40 CFR Parts 257 and 258).

garbage. Making ash management subject to Subtitle C will not protect the public or help solve the nation's solid waste crisis, but instead will merely impose Respondents' waste management agenda on state and local government.

ARGUMENT

1. Ash Poses Less Risk to the Public Than Municipal Solid Waste ("MSW").

Congress provides different levels of regulation under RCRA, depending on the degree of risk to the public from improper management of different kinds of waste. Hazardous waste can "cause or significantly contribute to an increase in mortality or an increase in serious illness" and can "pose a substantial present or potential hazard to human health or the environment." 42 U.S.C.A. § 6903(5) (West 1983). Solid waste, on the other hand, is "any garbage, refuse, sludge . . . and any other discarded material," regardless of the threat posed to the public or environment. 42 U.S.C.A. § 6903(27) (West 1983).

Both municipal solid waste[6] and ash from its incineration have been tested to determine potential public health concerns. Extensive testing of leachate[7] from ash and MSW has been documented by public agencies and

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[6] "Municipal solid waste", or "MSW," refers to waste from households, businesses and institutions that is excluded from the definition of "hazardous" in RCRA and EPA regulations. See footnote 10, infra.

[7] "Leachate" refers to liquids such as water that pass through a waste material and collect contamination from the waste. Leachate from a landfill can migrate and pollute ground water unless collected and properly treated and disposed. A system of landfill liners and collection pipes serves this purpose. See, e.g., EPA Solid Waste Disposal Facility Criteria: Final Rule, 56 Fed. Reg. 50978 (Oct. 9, 1991); Minimum Functional Standards for Solid Waste Handling Facilities, Wash. Admin. Code ch. 173-304 § 460 (1990); and Special Incinerator Ash Management Standards, Wash. Admin. Code ch. 173-306 § 440 (1990).

private companies for both research and compliance purposes.[8] The U.S. Environmental Protection Agency's "Toxic Characteristic Leaching Procedure" ("TCLP"), which is used to determine if a solid waste is "hazardous", mimics leachate generation in a landfill. 40 CFR § 261.24 (1991). TCLP tests on ash and ash landfill leachate have been compared to the results of tests on MSW landfill leachate.[9] Consistently, leachate from ash is less contaminated than the leachate from MSW landfills.

These tests clearly demonstrate that, in a landfill environment, ash presents less risk of ground water pollution than MSW. It is undisputed that MSW is not regulated as a "hazardous" waste under Subtitle C of RCRA.[10] Congress concluded that MSW can be safely regulated under Subtitle D as a solid waste. The Court of Appeals' decision imposing Subtitle C standards on ash management is perverse. Congress did not intend Subtitle

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[8] EPA, Characterization of Municipal Combustion Ash, Ash Extracts and Leachates (March 1990) (EPA/530-SW-90-29A); NUS Corp., Final Municipal Waste Combustion Ash and Leachate Characterization, Woodburn, Oregon (1989); Ujihara, Managing Ash From Municipal Waste Incineration (Nov. 1989); Clapp, Municipal Solid Waste Composition and the Behavior of Metals in Incinerator Ashes (Feb. 1988); McGinley and Kmet, Formation, Characterization, Treatment and Disposal of Leachate from MSW Landfills (August 1987) (Wisconsin Department of Natural Resources).

[9] NUS Corp., Characterization of MWC Ashes and Leachates from MSW Landfills, Monofills and Co-Disposal Sites (1987) (EPA/530-SW-87-028F).

[10] Congress clearly intended that "general municipal wastes" not be regulated as hazardous. S. Rep. No. 988, 94th Cong., 2d Sess. 16 (1976). See also 42 U.S.C.A. § 6941 (West Supp. 1991). "Household" waste, regardless of its content or quantity, has been excluded from Subtitle C since RCRA's inception. 43 Fed. Reg. 58969 (Dec. 18, 1978)(promulgating 40 CFR § 261.4(b)(1) (1991)). In 1984 Congress provided a "clarification of household hazardous waste exclusion" in the section of RCRA that is the focus of this litigation; i.e., 42 U.S.C.A. § 6921(i) (West Supp. 1991) (herein "RCRA Section 3001(i)"). Small quantities of waste from businesses and institutions, regardless of content, have also been excluded from Subtitle C since RCRA's inception. 43 FR 58969 (Dec. 18, 1978); 40 CFR § 261.5 (1991). Together, these exclusions allow local government to manage MSW outside the confines of Subtitle C.

C to apply to waste that poses less risk to public health than MSW.

2. Applying Subtitle C Standards to Ash Discourages Beneficial Waste Management Options.

The Court of Appeals' interpretation of RCRA threatens the viability of both of the key alternatives to MSW landfills: resource recovery and material separation. RCRA, however, reflects a national policy that encourages resource recovery and recycling. Congress found:

> [M]illions of tons of recoverable material which could be used are needlessly buried each year [, and] methods are available to separate usable materials from solid waste.
>
> * * *
>
> [S]olid waste represents a potential source of solid fuel, oil or gas that can be converted into energy [, and] technology exists to produce usable energy from solid waste.

42 U.S.C.A. § 6901(c) and (d) (West 1983). See also id. § 6941(a)(1) - (3).

Compliance with Subtitle C would dramatically impact existing resource recovery and ash disposal facilities. For example, Spokane transports ash for off-site disposal at a privately owned landfill and pays a "tipping fee" to amicus Regional Disposal Company, the landfill owner. The tipping fee is based in part on landfill operating costs, which are in turn influenced by the extent of landfill regulations. Amici Skagit County, Marion County and Tacoma dispose of ash at publicly owned landfills. These communities do not pay tipping fees, but instead directly finance the costs of operating ash landfills. Amicus Recomp owns and operates resource recovery and ash disposal facilities in Whatcom County, Washington, and charges a disposal fee based on the cost of operating both facilities. Typically, ash disposal costs represent 20 - 30% of the cost of operating a resource recovery facility.

The relative costs of operating Subtitle C and Subtitle D landfills are reflected in the tipping fees charged by these facilities. The tipping fee for off-site ash disposal in the Pacific Northwest is approximately $35 - 40 per ton. The operating cost for on-site ash disposal in the Northwest is approximately $25 - 30 per ton.[11] The cost of disposal at RCRA Subtitle C facilities in the Pacific Northwest, on the other hand, is approximately $120 - 140 per ton.[12]

Thus, the Court of Appeals' decision would impose an immediate tipping fee increase on existing facilities of at least 300%.[13] Many resource recovery facilities would be forced to close. All of the existing ash landfills would be forced to close or bear the additional cost to upgrade to Subtitle C standards, if that were possible. Solid waste landfills would increase. This would further exacerbate an already short supply of landfill capacity and, in areas such as Spokane, accelerate the threat to drinking water from leaking solid waste landfills. This is hardly consistent with Congress's expressed policy to encourage energy recovery from solid waste and minimize solid waste landfills.

The Court of Appeals' decision could also adversely affect material separation (i.e., "recycling"). To justify its interpretation of RCRA, the Court of Appeals relied heavily

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[11] The difference between the cost per ton for on-site and off-site ash disposal is primarily due to the cost of transportation.

[12] In the Pacific Northwest, existing Subtitle C landfills are located in Montana, Utah, Idaho and Oregon. The cost estimate for disposal at these facilities does not include the cost of transportation.

[13] In 1987 EPA recognized the significant cost of disposing of ash as hazardous waste: "If the ash generated by a municipal waste combustion facility were to be managed as a hazardous waste, the cost of managing that ash would be expected to increase substantially." EPA, Municipal Waste Combustion Study: Report to Congress, p. 26 (June 1987) (EPA/530-SW-87-021).

upon the fact that incineration changes the physical and chemical nature of solid waste.[14]

> [T]he "garbage" that emerges from the incineration process -- ash -- is fundamentally different in its chemical and physical composition from the . . . rubbish that goes in. It does not follow that the generation of . . . a whole new substance with the characteristic of a hazardous waste should be exempt from regulation just because Congress wanted to spare households and municipalities from a complicated regulatory system if they inadvertently handled hazardous waste.

Environmental Defense Fund, Inc. v. City of Chicago, 948 F.2d 345, 351 (7th Cir. 1991); Petition for Writ of Cert., p. 14a. The Court of Appeals reasoned that household waste loses its exclusion from Subtitle C once the chemical and physical nature of the waste changes.

Like incineration, removing paints, solvents, oil, bottles, cans, batteries, plastic and paper from solid waste necessarily changes the physical and chemical nature of that waste. Major new "materials recovery facilities" ("MRFs") are being built and operated across the country in an effort to recover valuable materials from the solid waste stream. Other communities rely on "source separation," where the generator (i.e., household or business) separates usable materials from the solid waste stream.

Material separation saves money and protects the environment by reducing the amount of material that must be landfilled. Separated materials such as newspaper and aluminum cans replace "virgin" materials such as trees and aluminum ore. This eliminates secondary

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[14] There is no question that ash is different chemically and physically from solid waste. This is a necessary consequence of liberating the energy stored in garbage to generate electricity or steam. It is also one reason that the leachate from ash is less of a threat to ground water than the leachate from solid waste.

environmental impacts from extracting virgin materials. In some cases material separation produces "refuse-derived fuel" ("RDF"). RDF is used as fuel at resource recovery facilities and even in existing industrial boilers and furnaces in place of or as a supplement to coal or oil.[15]

Under the Court of Appeals' reasoning, all MSW loses the benefit of any Subtitle C exclusions if the "chemical and physical composition" of the waste changes. As a result, the Court of Appeals' interpretation of RCRA strips the household waste exclusion not only from resource recovery residue but also from material separation residue.

Without a Subtitle C exclusion, residues from any material separation process must be tested under RCRA Subtitle C and, depending on test results, stringently managed as "hazardous waste". Suddenly, the cost and regulatory complexity of managing the waste from MRF, RDF and other material separation programs, like ash from resource recovery facilities, become prohibitive. The Court of Appeals' interpretation of RCRA discourages material separation and resource recovery and is inconsistent with congressional policy.

3. The Court of Appeals' Interpretation Destroys Local Planning Efforts.

Historically, cities and counties have shouldered the responsibility for planning and implementing programs to manage solid waste. Congress recognized this responsibility in providing technical and financial assistance to local governments, while mandating minimum federal standards for waste disposal facilities. 42 U.S.C.A. § 6901(a)(4) (West 1983). Local governments understand local needs, local resources and local policies. Based in this understanding, they can identify appropriate disposal and collection systems for their communities and choose either to implement those systems themselves or to rely upon private enterprise.

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[15] The preamble to the original Subtitle C regulations recognized that RDF should fall within the household waste exclusion. 45 Fed. Reg. 3309 (May 19, 1980).

RCRA emphasizes that resource recovery should be considered in developing local plans. 42 U.S.C.A. §§ 6943(a)(2), 6947(b) (West 1983). RCRA provides that resource recovery should be considered a viable alternative to landfills. See, e.g., 42 U.S.C.A. § 6902(a)(1) (West Supp. 1991) (federal assistance for planning resource recovery); § 6942(c)(10) and (11) (West Supp. 1991) (state plans must consider resource recovery facilities and markets for energy recovery); § 6943(c) (West Supp. 1991) (federal assistance for studying feasibility of resource recovery systems); § 6943(d) (West Supp. 1991) (recycling considered in sizing resource recovery facilities).

In the Pacific Northwest, local governments plan waste management under state-wide goals and priorities. Washington's cities and counties began long-term waste management planning in the early 1980s. They must update their plans regularly. Wash. Rev. Code § 70.95.110 (1989). Spokane's journey through local planning is outlined at pages 1 - 3, above. Spokane's experience illustrates how local conditions and policies shape local waste management decisions. It points out how recycling and resource recovery are options badly needed to address the waste management crisis. Finally, it demonstrates that planning for integrated waste management requires substantial resources and that implementing local choices requires long-term contractual commitments.

Amici Skagit County, Marion County and Tacoma have made similar journeys. Each community has different policies and different constraints. Nonetheless, all of them studied and debated recycling and resource recovery at the local level and then selected and implemented local choices. Amici committed to resource recovery under the belief that RCRA Section 3001(i) excluded ash from Subtitle C. Their understanding was based on the language of regulations and statutes and on court decisions which had, prior to the Court of Appeals'

ruling in this case, uniformly so interpreted Section 3001(i).[16]

The Court of Appeals' decision removes resource recovery as a viable alternative for local governments, contrary to national policy in RCRA. The cost of managing ash from resource recovery as hazardous waste is simply prohibitive.[17] For communities already implementing resource recovery, the consequences are potentially disastrous. The results of a decade of solid waste planning could become useless. Long-term contracts and financing commitments could be jeopardized. Hundreds of millions of dollars of capital improvements could become too costly to maintain. The Court of Appeals' interpretation of RCRA destroys local planning.

4. The Court of Appeals' Interpretation Undercuts State Ash Management Programs.

RCRA allows states to develop and administer their own solid and hazardous waste programs.[18] Consistent with RCRA's federal framework, several states created detailed regulatory programs to address management of ash from MSW resource recovery facilities.

For example, Washington enacted an Incinerator Ash Residue Act, Wash. Rev. Code ch. 70.138 (1989), early in 1987. In 1990 Ecology promulgated Special

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[16] Environmental Defense Fund, Inc. v. Wheelabrator Technologies, Inc., 725 F. Supp. 758 (S.D.N.Y. 1989), affirmed, 931 F.2d 211 (2d Cir.), cert. denied, 112 S.Ct. 453 (1991); Environmental Defense Fund, Inc. v. City of Chicago, 727 F. Supp. 419 (N.D. Ill. 1989), reversed, 948 F.2d 345 (7th Cir. 1991).

[17] As explained at pp. 9 - 11, supra, material separation would also become cost-prohibitive under the Court of Appeals' reasoning.

[18] By establishing state programs at least as stringent as parallel federal programs, states may administer the Subtitle C hazardous waste program, 42 U.S.C.A. §§ 6902(a)(7), 6926(b) (West Supp. 1991), obtain federal financial assistance for Subtitle D solid waste programs, 42 U.S.C.A. §§ 6943(a) (West 1983), 6945(c) (West Supp. 1991), and 6947(a) (West 1983), and administer the federal underground storage tank regulatory program, 42 U.S.C.A. § 6991c (West Supp. 1991).

Incinerator Ash Management Standards, Wash. Admin. Code ch. 173-306 (1990), to implement the Act. Ash generators in Washington must develop approved ash management plans with measures to minimize ash volume and maintain its quality, as well as to provide for its safe transport and disposal. Wash. Admin. Code § 173-306-200 (1990). Ash must be tested quarterly; Ecology monitors the results. Id. Ash may be disposed of only in dedicated ash landfills, called monofills, that meet detailed standards for siting, performance, monitoring, and design. Wash. Admin. Code §§ 173-306-350, -450 (1990). Monofill operators must provide financial security to assure their facilities' safe closure. Wash. Admin. Code § 173-306-470 (1990).

Uncertainty regarding the scope of RCRA Section 3001(i) threatens the viability of Washington's ash program. Although developed specifically to address the characteristics of ash from MSW resource recovery, Washington's ash program is not intended to be identical to Subtitle C requirements for hazardous waste management. For example, Washington's ash program does not require each shipment of ash to be tracked with manifest documents in triplicate. Compare, Wash. Admin. Code ch. 173-306 (1990) with 40 CFR § 262.20 (1991). Other states have programs specifically designed for ash management that are not identical to the Subtitle C program.[19]

So long as the Seventh Circuit's decision remains in effect, the status of state ash programs is unclear. At worst, these programs and the resource recovery and ash landfills designed and built in accordance with their provisions could be rendered legally obsolete. Supreme Court review of the Seventh Circuit's decision is required to resolve this uncertainty.

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[19] See, e.g. Mich. Comp. Laws §§ 299.432a - .432b (1991); Fla. Stat. Ann. § 403.7045 (West Supp. 1992); Fla. Admin. Code ch. 17-702 (1990); Code Me. R. ch. 403 (1990); Mass. Regs. Code title 310, §§ 19.119, .131 (1990); Conn. Agencies Regs. §§ 22a-209-1, -8, -14 (1990); N.Y. Comp. Codes R. Regs. title 6, §§ 360-2.14, -3.5 (1991); N.H. Code Admin. R. Dept. Env. Serv. Part Env. Wm 2602 (1991); 25 Pa. Code § 75.37 (1990).

CONCLUSION

This Court should grant the petition for a writ of certiorari.

Respectfully submitted,

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